DITOR'S NOTE:

HE FOLLOWING PAGES WERE POOR HARD COPY
T THE TIME OF FILMING. IF AND WHEN A
ETTER COPY CAN BE OBTAINED, A NEW FICHE
ILL BE ISSUED.

Supreme Court, U.S.
FILED
SEP 13 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. 89-105

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

JOE L. ROBINSON,
Petitioner,

vs.

DAVE QUICK,et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
SIXTH CIRCUIT COURT OF APPEALS

PETITIONER REPLY BRIEF FOR WRIT OF CERTIORARI

JOE L. ROBINSON
5208 Whaley Drive
Dayton, Ohio 45427
(513) 854-2789

TABLE OF CONTENT

	Page
Table of Citations.....	i
Brief Statement of the Case & Facts.	1
Argument & Law.....	9
Conclusion.....	19
Certificate of Service.....	23

TABLE OF CITATIONS

	Pages
CASES	
Clayton v. U.A.W. ..... 451 U.S. 679 (1981)	13
Grant v. Bethlehem Steel..... 622 F .2d 43 (1980)	21
Hernanez v. Texas..... 347 U. at 480, 275 Ala	13
Norris V. Ala..... 294 U.S. 587	14
Robinson v. Quick/Peck..... 88-3298 (D. C. 87)	6
Romero v. Union Pacific R.R..... 615 F .2d 1304 (10th cir. 80)	16
Swain v. Ala..... 380 U.S. 233	9,13,19
Strouder v. W. Va..... 100 U.S. 303	14
Winston v. Lear-Sigler..... 558 F .2d 1266 (6th cir.)	16,20,21
FEDERAL RULES & SUPREME COURT RULINGS	
Federal Court Rules 56g.....	10
Federal Court Rule 11.....	10
Supreme Court Law Week Index Vol. 55, 1986-87 Term, 85-2169-4626....	14
U.S. Law Week Vol. 55 1986-87 Term no. 85-1626, 85-2010 4881...	15

BRIEF STATEMENT OF THE CASE & FACTS

This case involves three separate actions filed by Petitioner, Joe L. Robinson, against two of his supervisors, Dave Quick & Zola Peck, and amended Delco Moraine, G.M.C. also against his Union, Local 696 U.A.W. Petitioner had a non contested injury from his former employer, Delco Moraine, G.M.C. from a 1974 industrial injury which led to two operations in 1983 to relieve depression of further paralyzing to his complete left side.

On 6-26-84, Petitioner filed a complaint of discriminiation against Dave Quick/Zola Peck because of harrassment & discrimination. On 6-11-85, he amended his employer, Delco Moraine, G.M.C. Following the filing of the complaint, Peck ceased to harass him and transferred to another shift. However, Quick got other supervisors, including Roy Schfeek

to continued harassing him, he would come to work and be given no work passes and sent back home daily without pay. Pet.-itioner filed many grievances over this treatment through his union committeeman, Ken Hawkey. Earlier, in 1983, when Petitioner was placed on jobs against his codes, he was discip;ined by his super-visors. He filed grievances by his com-mitteeman and was paid $450.00 flat rate and record cleared. These grievances was filed by Tommy Hoskins, the other grievan-ces was filed by Ken Hawkey (discrimination, short work week, overtime & shift change) was never settled but stated by Respon-dent Local 696 U.A.W. (union) that all grievances had been settled which was signed by Frederick G. Cloppert, Jr. as of this date 10-21-86.

The complaint which was filed by Petitioner against Quick/Peck & Delco

moraine, G.M.C. went to jury trial on 11-22-87, Title VII 42 U.S.C. 1981 was dismissed by the court who stated, "Plaintiff will suffer no prejudice from the striking of his Title VII complaint because the same order and allocation of prior applicable in a disparate treatment case under Title II maybe utilized in adjudicating race discrimination claims arising under 1981". However, on 11-27-87, when Petitioner went to court, he received an all white jury who stated they could render a fair verdict based on the evidence presented. The record will show they found the Defendants not guilty, after Petitioner presented guinine evidence from six of his witnesses testimonies & corporated testimonies of the Defendants witnesses . Petitioner filed a motion to strike the racial and bias verdict & motion for a new trial which was denied

by the District court and affirmed by the Appeal Court.

- Petitioner filed a timely Writ of Certiorari which was docket and sent to the Respondent attorney, Joseph P. Buchanan as of this date, Petitoner have not received an opposition from the Respondents, Quick/Peck & Deleo Moraine, G.M.C.

In 1985, while Petitioner was still employed at Delco Moraine, he taken his vacation and went to Texas. He sent a card back to his supervisors, Quick & Schfeek, of having a nice time. When he returned from vacation and went to work on 8-5-85, he was told by his supervior, Quick that he was transferred to second shift and that his transfer had been explain to him by supervisor Schfeek the week of July. However, at this time, Petitioner and family was in Texas and had no contact with Schfeek. Supervisor Quick ordered Petitioner to go to second

shift and perform a job which he and Ken Hawkey, committeeman, had signed a settled grievance on 2-20-85, that Robinson was medically coded from working. This was done to block Petitioner back overtime and regular time pay (no work passes) starting in 1984. Petitioner asked his supervisor was he going to give him all of his back pay, he replied, no. Petitioner asked for his union representative. Ken Hawkey came and Petitioner the situation to him and stated he was the 5th highest seniority person in the department and asked if high seniority rule according to the contract, Hawkey said yes, Petitioner further stated that there was other white coded employees with less time and was not ordered to go to second shift and that this was continued harrassment and discrimination toward him.

In Defendant, Local 696 U.A.W. answers

they agreeded that the employees Petitioner mention was coded, white and had less seniority. One of them Gene Baker testified that he had two weeks less time than Petitioner and he was coded but was not harrass. Ann Huguely testified to the white employees who was coded, had less seniority and not harass, Robinson v. Quick/Peck, 88-3298 (D. C. 1987) .

On 8-5-85, Petitioner was discipline for refusing to go to second shift and sent out the door. Ken Hawkey stated to him that he would meet him at the union hall and file a grievance which he did on 8-8-85, for discipline and shift change, which was affirmed by the Defendants, Quick/Peck attorney Joseph P. Buchanan, in his Appellee brief, stated that "Plaintiff filed a grievance over this transfer".

On 9-26-86, Petitioner filed a discrimination & conspiracy complaint against

his union after receiving a right-to-sue-letter from E.E.O.C., 42 U.S.C. 1981 & 42 U.S.C. 1983 & 42 U.S.C. 1985. Respondent Union denied the shift change grievance existed and file a motion for summary judgment with false affivadits stating Robinson did not asked them to file a grievances, signed by Mark Dobson, then chairman of shop committee & Dorris Duff 2A representative. However, the Respondent never mention Ken Hawkey committeeman who write grievances for his district which Petitioner was in. The false affividits was notarized by Frederick G. Cloppert, Jr. Petitioner grievance was filed on 8-8-85, but was not acted upon which let to his seniority being cancelled on 9-17-85, 45 days later.

Respondent, Union, file a motion for summary judgment which was granted to him by the court. In his summary judgment he stated, Robinson never asked them

to file a grievance protecting this action, if so the union duty would have been triggered, this was in 1986. In 1989, three years later, in Respondent, Union, opposition brief for writ of certiorari, he stated in pertinent parts, "On August 8, 1985, union committeeman Kent Hawkey file a grievance on Mr. Robinson's behalf seeking to overturn the DLO. After August 8, 1985, Mr. Robinson never filed another grievance of any kind". pg. 4.

The District Court ordered Robinson to give the Defendant Union, a deposition to flush out the truth to a retialiation discrimination claim which he did. In Robinson depostion he stated Dorris Duff, 2A representative became hostile and use derogatory remarks and stated "that because of my hard-head and not minding my own business, and for helping another employee get their job back, I was going to lose my own". Depo. 31, 34,35.

Petitioner filed a summary judgment against Respondent (Union) with the use of the false affivadits of Duff & Dobson, Robinson's deposition, excerts of the transcript of the trial of Robinson v. Quick/Peck, supra and in alternative if this case went to jury trial, he wanted a mixed jury black and white according to the law, members of his own race. Swain v. Ala., 380 U.S. 233, the case was dismissed on the Defendant summary judgment, Plaintiff motion was overruled for lack of evidence. The Sixth Circuit affirmed the District Court decision.

ARGUMENT & LAW

In Respondent Union Opposition to writ of Certiorari, he stated Petitioner failed to demonstrate special & important reasons why a writ of certiorari should issue in this case. Petitioner states that a writ of certiorari should be

granted because the courts has so far departed from the accepted and usual course of judicial proceedings.

Respondent Union filed a summary judgment and used affivadits made in bad faith Fed. Rule 56 (g), which stated (affivadits) Robinson never asked them to file a grievance. However, Respondent denied for three years that Ken Hawkey existed. Respondent finally in his writ of certiorari admitted that Ken Hawkey did file a grievance for Petitioner #735527/5-5000. In Respondent first summary judgment, he stated if a grievance had been filed, the union duty would have been triggered. He also violated Fed. Rule 11, signing of pleadings, when he stated and signed, "all grievances had been settled as of this date."

In the District Court dismissal of Petitioner case against his Union, he stated, Plaintiff never filed a grievance

over his transfer to second shift." Petitioner was discipline for not going to second shift after the supervisor admitted he was in Texas and could not have been notified earlier. However, the grievance that Hawkey filed stated Robinson's was not guilty his record be cleared and he be paid all benefits. Hawkey testified in Robinson v. Quick/Peck supra, that this was a contract violation which was ruled upon by the court, he further stated Petitioner had seniority to hold days as his committeeman, he never told him to go to second shift. Jack Kinderdine, plant supertindent, testified this was a contract violation, which was ruled upon by the court. Mark Dobson, ex-chairman of shop committee, testified this was a direct violation of the contract he further stated the union job is to argue and protect employees from their employer when problems arises.

The District Court stated "Plaintiff did not file a grievance of his transfer and that the union had nothing to do with whith his transfer to second shift, that it was management decision". Petitioner stated management stated they found other jobs but did not offered them to him. Paragraph 63 of the contract states transfer is the sole responsibility of management but they cannot not discriminate because of race, creed, sex, national origin etc. The Defendant Union admitted there was three injuried (coded) white employees with less seniority than Petitioner. They admitted Petitioner called his committeeman on 8-5-85 in protest the disparate treatment and transfer. They admitted Petitioner came over to the Union hall and talk to Dorris Duff who refused to help but became hostile, causing him not to go back for fear of his safety and life, but Petitioner did sent several

letters concerning his disciplinary, grievances and transfers which they (union) never answered or responded Clayton v. U.A.W. 451 U.S. 679 (1981) , where the union officials are so hostile to the employee that he could not even hope to obtain a fair hearing on his claim. In Respondent opposition , they admitted that a grievance was filed for Petitionee on 8-8-85.

Rule 17 of the Rules of Supreme Court of the United States states a writ of certiorari will be granted only when there are special and important reasons therefor. Petitioner special and important reasons are as follows:

In Robinson v. Quick?Peck, supra; Petitioner received an all white jury, after the Defendant attorney, Joseph P. Buchanan, had the blacks excluded Hernanez v. Texas, 347 U. at 480, 275 Ala., Swain v. Ala. 380 U.S. 233 which is a direct

violation of the equal protection which the constitution guarantees, Norris v. Ala. 294 U.S. 587, Strouder v. W. Va., 100 U.S. 303. In The Supreme Court Law Week Index Volume 55, 1986-87 term states; Racial Discrimination 42 U.S.C. 1981, barring discrimination in making and enforcing contracts was intended by congress to protect identificable classes of persons subjected to intentional discrimination solely because of ancestry or ethnic characterists...is actionable under act, no. 85-2169-4626.

In Robinson v. U.A.W., Respondent stated in his first summary judgment all grievances had been settled as of ;0-26-86. They filed false affivadits & denied Hawkey existed or file grievances was granted summary judgment. In Respondent opposition to writ of certiorari they admitted Hawkey does exist and did file grievances. Respondent stated, the Union has no obligation to process every

grievance to arbritration regardless of its merit. In Robinson v. Quick/Peck trial, Ken Hawkey, Mark Dobson testified this was a contract violation, they process the grievances from their positions and sent them to the next step which was Dorris Duff who must have withdrawn them. Petitioner states the discrimination grievance paragraph 6 & 6a has never been settled. The Supreme Court ruled that if a union fails to prosecute on behalf of black employee, theu can be held liable under C.R.A. 1866 Title VII of 1964 C.R.A. U.S. Law Week Vol. 55 1986-87 Term no. 85-1626, 85-2010 4881. Ken Hawkey testified Robinson filed his grievance according to the contract paragraphs 28-30.

Respondent Union stated in his opposition, Petitioner retialiation claims were properly dismissed because

he proffered no evidence of casual connection between protected activity and the adverse employment action. Petitioner states that it is recognized that retialiation for having protested against racial discrimination is, itself, racial discrimination, Winston v. Lear-Sigler, 558 F 12d 1266 (6th cir.), Romero v. Union Pacific R. R. 615 F.2d 1304 (10th cir. 1980). Petitioner was discriminated against by his employer. The contract was violated against him by his employer. The contract is a signed agreement between Local 696 U.A.W. and Delco Moraine General Motors Corporation as testified to by Jack Kinderdine, plant supertindent, when asked to discribe the books by Defendant attorney, Joseph P. Buchanan .

Petitioner states the union job is enforce the contract and protect it's

members from discrimination and contract violations of their employer (Delco Moraine). In Winston v. Lear-Sigler states if union does not take action against discriminatory practices by an employer, it maybe held responsbile for those practices C.R.A. of 1964 703 (a), 704 (a) as amended 42 U.S.C.A. 2000e-2 (c), 2000e-3 (a). In Robinson v. Quick/Peck, supra , testimonies was given to Petitioner being discriminated and the contract being violated by Quick/Peck and Delco moraine; Beulah Booker, Richard Gray, Ann Huguely, Gene Baker, Winston Reed and Lucille Mosley testified to Petitioner being discriminated against by the Defendants.

Beulah Booker, Mark Dobson, Ken Hawkey, Jack Kinderdine and Dr. Mobley testified to contract violation. Ken Hawkey testified to filing grievances

for Petitioner. Mark Dobson testified to processing all grievances for Petitioner and sent them to the next step which was Dorris Duff 2A representative step.

In Petitioner sworn deposition, he stated he went over to the Union Hall to complain about his contractual rights being violated, where he met harrassment, derograting name calling and hostile treatment from Dorris Duff 2A representative, who asked him to leave and not come back. Petitioner stated he feared for his safety and life and refused to go back, but sent several letters to his union officials requesting they act on his grievances and transfer, they refused to answer or respond.

CONCLUSION

Petitioner pray that a Writ of Certiorari be granted to him and that the two court decisions be reversed and that he be reinstated back to his job with all benefits, back pay, expenses, and reasonable punitive damages. Petitioner has shown proof of discrimination by Quick/Peck and Delco Moraine G.M.C. his employer and that of the court when he identified the all white jury as being unconstitutional Swain v. Ala, supra,. Respondent, refused to answer Petitioner Writ of Certiorari.

Petitioner pray that a Writ of Certiorari be granted to him against Respondent, Local 696 U.A.W. who have disassociated themselves from the contract and denied the contract exist in every respect. They denied Ken Hawkey, committeeman who filed grievances and

did file Petitioner grievance on 8-8-85, and possibly sisteen or more lump together grievances that existed from 1983-85. Respondent failed to answer any of the charges brought against them directly, but only quoted what the courts stated in their dismissals, who is not a party to the action. Petitioner pray that Respondent be held liable under C.R.A. 1866 and Title VII of 1964 C.R.A. and that the judgment be reversed.

Petitioner states his complaint is similar to the same as Winston v. Lear-Sigler, supra, where Petitioner was punish by Respondent, Union, for helping another black employee when she was being fired (balance and 30 days) by the Corporation after not being represented by the Union, who refused to process her grievances.

Petitioner filed his complaint 42 U.S.C. 1981, 42 U.S.C. 1983 and

42 U.S.C. 1983 because of discrimination and conspiracy between the Company (Delco Moraine) and Union Local 696 U.A.W., both was trying to punish and deny Petitioner of his constitutional rights.

Joe Dowling (union) conspired with Dave Quick (company) to send Petitioner to second shift to keep from sending less seniority white person to second shift. The union conspired with the company in not settling Petitioner grievances which caused his seniority to be cancelled. The union retialiated against Petitioner for helping a fellow black employee union member, Winston v. Lear-Sigler, supra, Grant v. Bethleham Steel, 622 f .2d 43 (1980). Both of these cases was reversed and compensated.

Petitioner pray that judgment be reversed and that he be compensated

with full back pay, expenses and reasonable punitive damages and be reinstated back to his job.

Petitioner pray for relief.

CERTIFICATE OF SERVICE

This is to certify that three copies of Petitioner Reply Writ for Certiorari is beomg semt to the names listed below by U.S. Mail, postage prepaid this 13th day of September, 1989:

Joseph P. Buchanan 2580 Kettering Tower, Dayton, Ohio 45423, Counsel for Respondents, Quick/Peck & Delco Moraine, G.M.C., and Frederick G. Cloppert, Jr. 225 East Broad Street, Columbus, Ohio 43215, Counsel for Respondent Local 696 U.A.W.

Joe L. Robinson

Subscribed and sworn to before me on this the 14th day of September 1989

James G. Miller

JAMES G. MILLER. Notary Public
In and for the State of Ohio
My Commission Expires Mar. 6, 1994